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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/680,177	10/05/2000	Mitsuaki Oshima	2000-1391	6208	
75	90 05/16/2002				
Wenderoth Lind & Ponack L L P			EXAMINER		
2033 K Street N Suite 800	ı w		LE, AMA	LE, AMANDA T	
Washington, DO	20006		ART UNIT PAPER NUMBER 2634		
			DATE MAILED: 05/16/2002	DATE MAILED: 05/16/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

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•		Application No.	Applicant(s)	
		09/680,177	OSHIMA ET AL.	V
ı	Office Action Summary	Examiner	Art Unit	
		Amanda T Le	2634	
<i>۲۰</i> Period for R	he MAILING DATE of this communication ap <sub>l</sub> eply	pears on the cover sheet with t	he correspondence address -	<b></b>
THE MAI  - Extensions after SIX (  - If the perional in the period in the pe	TENED STATUTORY PERIOD FOR REPL LING DATE OF THIS COMMUNICATION. s of time may be available under the provisions of 37 CFR 1.16) MONTHS from the mailing date of this communication. of for reply specified above is less than thirty (30) days, a reply of for reply is specified above, the maximum statutory period reply within the set or extended period for reply will, by statute received by the Office later than three months after the mailing lent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply ly within the statutory minimum of thirty (30 will apply and will expire SIX (6) MONTHS a, cause the application to become ABANI	be timely filed  ) days will be considered timely.  I from the mailing date of this communication  DONED (35 U.S.C. § 133).	ation.
1)⊠ Re	esponsive to communication(s) filed on 24	September 2001 .		
2a) <u></u> ⊤h	nis action is <b>FINAL</b> . 2b)⊠ Th	nis action is non-final.		
clo	nce this application is in condition for allow osed in accordance with the practice under			ts is
Disposition				
·	nim(s) <u>13-23</u> is/are pending in the application			
_	Of the above claim(s) is/are withdra	wn from consideration.		
	nim(s) is/are allowed.			
	im(s) <u>13-23</u> is/are rejected.			
` <u> </u>	im(s) is/are objected to.			
•	nim(s) are subject to restriction and/o	or election requirement.		
Application I	· ·			
•	specification is objected to by the Examine		Eveminer	
<i>,</i> —	drawing(s) filed on is/are: a) acce			
_	pplicant may not request that any objection to th proposed drawing correction filed on	•	. ,	
	approved, corrected drawings are required in re	·	pproved by the Examiner.	
	oath or declaration is objected to by the Ex	. •		
,—	er 35 U.S.C. §§ 119 and 120			
_	knowledgment is made of a claim for foreign	n priority under 35 H.S.C. & 1:	10(a) (d) or (f)	
•	ll b)☐ Some * c)☐ None of:	in priority under 33 0.3.0. § 1	19(a)-(u) or (i).	
,	, ==	to have been received		
1	_		ingling No. 08/040 504	
_	Certified copies of the priority document			
	Copies of the certified copies of the prio application from the International Buthe attached detailed Office action for a list	reau (PCT Rule 17.2(a)).	_	
14)∏ Ackn	owledgment is made of a claim for domest	ic priority under 35 U.S.C. § 1	19(e) (to a provisional applic	ation).
	The translation of the foreign language pronowledgment is made of a claim for domest			
Attachment(s)		•		,
2) Notice of I	References Cited (PTO-892) Draftsperson's Patent Drawing Review (PTO-948) In Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u>	5) Notice of Infor	mary (PTO-413) Paper No(s) mal Patent Application (PTO-152)	<u>.</u> .
S. Patent and Tradem	ark Office			

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### Reissue Applications

1. Although the request for transfer of drawings from the parent application is filed, Applicant is informed that similar requests are made in the other pending divisional reissue application. Accordingly, the drawings will only be transferred to the reissue application no. 09/244,037. Formal drawings will be required for this application.

### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 13, 15, 17, 20, 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Bryan et al (5,561,468).

Bryan et al discloses an apparatus for transmitting a digital television signal comprising the following claimed limitations: "ECC encoder/decoder" (Fig. 2, 28 or 30, Fig. 5, 310 or 320),

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"modulator" (Fig. 2, 46-56, col. 7, lines 36-42), "data for demodulation" (col.8, lines 38-43, "rate sequence"), "receiver" (Fig. 5). Therefore, all the claimed limitations are taught by Bryan et al.

# Claim Rejections - 35 USC § 103

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 5. Claims 14, 16, 18, 19, 21, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryan et al in view of Wei (5,243,629).

Bryan et al discloses all the subject matters claimed, as stated above, with the exception of "a second ECC encoding that is different from the first ECC encoding".

Wei discloses a multi-subcarrier modulation for HDTV transmission wherein different levels of error protection are applied to different input data streams using different channel encoders (col. 4, lines 10-13). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bryan et al's FEC encoders using Wei's teachings for the purpose of giving a particular transmitter the flexibility of applying different level of error protection to a plurality data streams having different "levels of importance".

#### Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

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harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 13-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-23 of copending Application No. 09/680176. Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 13-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-17 of copending Application No. 09/677,421 in view of Wei.

This is a <u>provisional</u> obviousness-type double patenting rejection.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Le whose telephone number is (703)305-4769.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Stephen Chin**, can be reached at (703)305-4714.

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# Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

AMANDAT.LE
PRIMARY EXAMINER